



COMMUNITY DEVELOPMENT DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 (408) 778-6480 Fax (408) 779-7236
Website Address: www.morgan-hill.ca.gov

PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

AUGUST 9, 2011

PRESENT: Moniz, Mueller, Koepp-Baker, Benich, Dommer, McKay

ABSENT: Tanda

LATE: None

STAFF: Assistant City Manager (ACM) Little, Community and Economic
Development Administrator (CEDA) Rowe, Senior Planner (SP) Linder

Chair Moniz called the meeting to order at 7:00 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Community and Economic Development Administrator (CEDA) Rowe certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Moniz opened, and then closed, the floor to public comment for matters not appearing on the agenda as none were in attendance indicating a wish to address such matters.

MINUTES:

June 28, 2011

COMMISSIONERS MUELLER AND KOEPP-BAKER MOTIONED TO APPROVE THE JUNE 28, 2011 MINUTES

THE MOTION PASSED (6-0-1-1) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: BENICH; ABSENT: TANDA

July 12, 2011

COMMISSIONERS MUELLER AND KOEPP-BAKER MOTIONED TO APPROVE THE JULY 12, 2011 MINUTES WITH THE FOLLOWING REVISIONS:

Page 9, Para 17: Noting that there was no further business for the Planning

PLANNING COMMISSION MEETING MINUTES

AUGUST 9, 2011

PAGE 2

Commission at this meeting, ~~Chair Moniz~~ **Vice-chair Benich** adjourned the meeting at 9:51 p.m.

Page 5, Para. 3: THE MOTION PASSED (5-1-0-1) WITH THE FOLLOWING VOTE: AYES: ~~UNANIMOUS~~ **TANDA, KOEPP-BAKER, BENICH, DOMMER, MCKAY**; NOES: MUELLER; ABSTAIN: NONE; ABSENT: MONIZ

THE MOTION PASSED (5-0-1-1) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NOND; ABSTAIN: MONIZ; ABSENT: TANDA

ORDERS OF THE DAY

No changes.

CONTINUED PUBLIC HEARINGS:

1) USE PERMIT, UP-11-01: TECHNOLOGY-MAGUIRE:

Commissioner McKay excused himself at 7:08 p.m.

The applicant requests an approval for a conditional use permit to operate a dental practice in an existing building located at 18455 Technology Dr. The property is located in a PUD zoning district with Light Industrial designated uses. The project is categorically exempt from environmental assessment under Section 15301 of the California Environmental Quality Act (CEQA Guidelines) (APN 726-31-012)

Rowe presented his staff report and stated that staff is in support of the use permit due to the parking requirements being met.

Mueller: How much square footage will be used by the dental practice?

Rowe: Approximately 4,400 square feet.

Moniz opened the floor to public hearing.

Jeff King of Integrated Architecture appeared on behalf of the applicant. Part of the motivation of the clients in purchasing this space is to control their long term operating costs and thereby be able to stay in Morgan Hill for many decades. They are a great asset to the City of Morgan Hill.

Mueller: How big is the building?

King: The building is approximately 5,100 sq. ft.

Mueller: How much is the covered parking space?

King: It's about 500 square feet. BOMA (Building Operators Management Association) is a standard for measuring retail and commercial space. It actually counts deep windows, awnings, etc. But for an industrial building to count exterior overhang is ridiculous. BOMA looks at the building as a rectangle. But the enclosed part of the building is more like 4,900 square feet. Then when you deduct

PLANNING COMMISSION MEETING MINUTES

AUGUST 9, 2011

PAGE 3

512 for the enclosed parking that leaves 4,400 square feet, which would require 22 stalls. We have 23 as proposed.

Mueller: If you only needed 4,000 square feet, why didn't you look at leasing out parking from an adjacent business and then you wouldn't have to modify the building.

King: I believe they might act on that in the future, but to approach adjacent owners isn't very practical until the applicant actually owns the building.

Mueller: If you pursue it this way you won't have that capability.

King: I believe it can be more flexible.

Mueller: We could be more flexible in the wording by saying that we require a parking management plan and if you're going to lease out the 1,000 extra square feet then you'll have to account for the parking spaces offsite. But the way it is the use permit is forcing you down a certain path. That's why I'm concerned. It seems if I were to buy a building and only needed 80 percent, I'd want to lease out the other 20 percent.

Linder: So you want language saying that if the applicant wants to rent out 1,000 square feet in the future, they would need to provide the city of Morgan Hill with a parking plan to support that extra space prior to a tenant moving in.

Mueller: Yes.

King: One reason for the roll-up door was that it would then match other units in the area that also have roll-up doors.

Moniz closed the floor to public comment.

Mueller: It seems a better method for this would be to condition the Use Permit on a parking management plan that would allow the flexibility to lease out space to a future tenant.

Linder: So you think the Use Permit should contain two options: one with the roll-up door and one with a parking management plan that would be provided prior to occupancy?

Mueller: Yes.

Linder: Do you want that management plan prior to the dental practice moving into the building? I don't want to hold up occupancy.

Mueller: True, but they'd have to make that decision prior to the tenant improvements anyway.

COMMISSIONERS MUELLER AND BENICH MOTIONED TO APPROVE THE CONDITIONAL USE PERMIT WITH AN AMENDMENT TO ADD

PLANNING COMMISSION MEETING MINUTES

AUGUST 9, 2011

PAGE 4

THE POSSIBILITY OF A FUTURE PARKING MANAGEMENT PLAN

THE MOTION PASSED (5-0-1-1) WITH THE FOLLOWING VOTE:

AYES: UNANIMOUS; NOES: NONE; ABSTAIN: MCKAY; ABSENT: TANDA.

Commissioner McKay came back on the floor at 8:20 pm.

PUBLIC
HEARINGS:

2)DEVELOPMENT
AGREEMENT, DA-
11-06: BARRETT-
MH DOS:

A request for approval of a development agreement for a 34 unit portion of the 52-unit single-family residential project located on the northwest corner of the intersection of Barrett Ave. and San Ramon Dr. in the R-1 7,000 RPD zoning district (APN 817-76-019, 021 & 022).

Linder presented her staff report: This is Phase 2 of what was previously known as Lone Oak Farms. The first 18 houses were built. Ongoing allocations were received. The project was then lost to the bank. This is a new development agreement with a new developer. This development agreement also includes language to cover the expansion of the BMR reduction program that was recently adopted by City Council.

McKay: Elaine, when the developer comes in their plan doesn't always indicate where their BMR units are going to be?

Linder: The Master Plan does specify where the BMRs are going to be located.

McKay: Then how do you not get a complete BMR?

Linder: If you're committing to 10 percent and you have a 52 unit project, that's 5.2 BMRs, so you would build five and owe .2 in the way of a housing-in-lieu fee. If it was a 55 unit project and it came to 5.5, you would round up and owe six BMRs.

Dommer: Of the two park areas shown, are they both developed?

Linder: No, they only started work in the larger of the two parks.

Mueller: What Paragraph D states seems to be different than what we were intending. What we intended to do was put only allocations for a phase in which they bought in a program at risk, and it took away the proportional part of the expanded program which says you have to complete all the units of a phase to get the full benefit of a reduction. What we asked for was that they would pay the 50 percent reduced fee at the occupancy of the first building just to get the fee to the city. But if they didn't complete then they were going to owe more money because it would be prorated.

Linder: So you want to see a table in D2 similar to what we did for the low?

PLANNING COMMISSION MEETING MINUTES

AUGUST 9, 2011

PAGE 5

Mueller: Yes. And section three wasn't intended to extend the commencement of construction dates.

Linder: It doesn't extend dates. Does it seem to imply that?

Mueller: Yes, and regarding the in-lieu fee, the development agreement should read that the reduced in-lieu is going to be collected early in the phase, but if you don't complete the phase, we're going to ask for the prorated portion of the whole phase. The development community may want to weigh in on this whole thing, since it affects all of them.

Moniz: Is the \$1,500 deposit in item 5 open ended?

Linder: It could be if it becomes a monitoring issue, but for projects that perform it would our standard tracking time.

Moniz: How would you do that?

Linder: We haven't had to do micro manage yet.

Moniz opened the floor to public comment.

Brian Hanly appeared on behalf of the applicant: We would like to move forward with the development agreement tonight, and then have the BMR language added to our development agreement later, rather than tabling it tonight.

Mueller: That would mean paying another fee for a development agreement amendment in another month.

Moniz: Our next hearing is September 13th.

Hanly: We'd like to get our development agreement in place because we have time commitments that we need to meet.

Linder: There will be standard language for all the developers, but they will all have to file for amended development agreements individually. You would have to file by September 1st.

Moniz: We just want to make sure that you realize that you'll have to go through this again if you move forward with the development agreement tonight, and then you'd have to insert BMR language as an amendment in the future.

Mueller: It also means that right now you would be committing to build the BMRs until the language is changed. But the document won't even go to city council until the end of August, so you don't have a development agreement you can use until September anyway. If we approve it tonight, you'll be committing to the BMRs that you submitted in your application—with no reduction—so what you had in your previous development agreement would no longer be valid. The other thing is that City Council won't even see this until September 7th and that wouldn't include any BMR waiver.

PLANNING COMMISSION MEETING MINUTES

AUGUST 9, 2011

PAGE 6

Linder: So if we continue it one month that would give us time to finalize the BMR reduction program language and you would likely be back at City Council by September 28th.

Hanly: So we're really only looking at three weeks difference?

Linder: Correct, and you'd have a development agreement with concrete language about the BMR reduction program.

Moniz: So you're requesting a continuance until September 13th?

Hanly: Yes, please.

Dick Oliver appeared to address BMR language: I was out of the country on June 22nd, so this is the first opportunity I've had to see anything. I believe there are some items here that are very unfair. First, Paragraph A on the first page has the wording "the medium BMR requirements are reinstated and the completed units after this date shall be enrolled in the BMR program." I think that language should read, "and the units not meeting the dates set forth above shall be enrolled in the city's BMR program." As it's worded it implies that even if you have met the dates of the paragraph above by starting the shear and roof sheathing, but may not have the units completed by September 12th, that those would not be eligible. That clarification would make it so there can't be confusion. The second point is that we have to make the applications for the extensions on September 2nd. At that time, we will not know the exact language of this because you are still fine tuning it. So it could possibly be construed as locking us into language which we have not seen. Specifically, I am concerned about paragraph F. If you'll read the first paragraph, the city attorney has suggested that everyone who makes an application for a reduction to continue this extension of the BMR program waives any claims that they may have in the past or in the future for any reason at all. That is grossly inappropriate because we have had an existing claim for refunds within the city for ten years. We've been actively negotiating those for almost ten years. We are in the process of going to City Council on a closed session to reach a settlement on that claim which could be in excess of \$500,000. For me to apply for an extension and waive that claim that I've been working on for ten years would be wrong. I also have some refunds I've been working on with Public Works for about six years for the Alicante and Mission Ranch projects. I will have to waive all those under this language and to me that is totally inappropriate. The verbiage should say that any preexisting claims should not have to be waived. The language the city attorney has put in is great for the city, but it causes me to give up my rights, and that's not fair.

Moniz closed the public comment period.

Moniz: How long do we have to work out this language that we've all just seen tonight?

Linder: I will take comments and talk to the city attorney and then try to hammer out a final version.

PLANNING COMMISSION MEETING MINUTES

AUGUST 9, 2011

PAGE 7

Mueller: In the original policy that Council adopted there is a filing date. Is there a way for us to say that mere filing of an application wouldn't impact any of these legal issues?

Linder: Just because they file doesn't mean they're locked into this. Had this particular development agreement not moved forward at this time, we wouldn't even have put this language before you. This gives a little bit of a head start for the projects that will be applying in September.

Mueller: The whole idea of this program is to get people to take advantage of it and build homes.

Linder: I will take tonight's input and any suggestions I get and come back with improved language.

Mueller: In Section F, it says "the developer is hereby notified that the 90 day...." I had a real question about that because of the 90 day appeal period. Typically, those 90 days doesn't start until Council adopts it. In this situation, the 90 day period would practically be over before we even get to the development agreement modifications.

Koepp-Baker: The issue that Dick Oliver brought up tonight about refunds we've heard about several times over the last 3-4 years. Is there a way to have legal counsel look at that as a grandfathered item, so that Mr. Oliver doesn't have to give up his rights while other negotiations are taking place.

Linder: Usually the language says from this time forward. The language about previous claims seems to be new. Mr. Oliver's point is well taken and we'll need to look into that. That would certainly be an inhibitor for Mr. Oliver and possibly others.

Randy Toch, the attorney for the applicant appeared: The question that I have is whether these issues can be bifurcated so that we can get our development agreement without having the entire debate of the city's policy.

Benich: We believe you've got that. Direction has been given to staff. Terry Linder is going to rework this and come back for public comment.

Linder: After I rework it, I will send it out to the development community to get their input, so that I can have potential issues investigated.

COMMISSIONERS MUELLER AND KOEPP-BAKER MOTIONED TO CONTINUE AGENDA ITEM 2 TO SEPTEMBER 13

**THE MOTION PASSED (6-0-0-1) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT:
TANDA.**

PLANNING COMMISSION MEETING MINUTES

AUGUST 9, 2011

PAGE 8

OTHER

BUSINESS:

3) RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) SECOND QUARTERLY REPORT FOR 2011:

Quarterly review of the progress of residential projects that have been awarded building allocations under the City's Residential Development Control System.

Rowe presented his staff report.

Mueller: We had a meeting with City Council and it seems we are being asked to tighten up and scrutinize projects that are behind schedule. Does that mean that we would ask projects to appear that don't have development agreements in place?

Rowe: You have the ability to recommend that the allocations be rescinded. There are at least four intervals before the hard deadline in February. If they don't, they could be called up.

Mueller: It seems that we ought to ask anyone to appear that is behind, if they have done nothing and don't have a legitimate reason for being behind.

Rowe: One of the purposes of providing this quarterly report is to give you the opportunity to request that staff call those projects in to appear and answer.

McKay: Also, weren't we going to show if they had completed steps 1-6?

Mueller: The projects that we would be calling in would be those that haven't completed those six steps and they don't have a development agreement in place. This would cause them to start meeting those steps.

Benich: When we come to the year, say 2015, and we look at the actual population and then we look at the backlog, wouldn't that mean we would have to limit our allocations in future years?

Rowe: Yes, and that is one of the problems with having a large backlog.

**COMMISSIONERS MUELLER AND DOMMER MOTIONED TO
FORWARD THE RDCS QUARTERLY REPORT TO COUNCIL WITH A
LIST OF THOSE PROJECTS THAT ARE BEHIND WITHOUT
MITIGATING CIRCUMSTANCES THAT WILL BE CALLED BEFORE
THE PLANNING COMMISSION**

**THE MOTION PASSED (6-0-0-1) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: TANDA**

ANNOUNCEMENTS/ COMMISSIONER IDENTIFIED ISSUES

None.

CITY COUNCIL REPORTS

None.

PLANNING COMMISSION MEETING MINUTES

AUGUST 9, 2011

PAGE 9

ADJOURNMENT

Noting that there was no further business for the Planning Commission at this meeting, Chair Moniz adjourned the meeting at 8:23 p.m.

MINUTES RECORDED AND TRANSCRIBED BY:

ELIZABETH BASSETT, Development Services Technician

R:\PLANNING\WP51\MINUTES\PCminutes\2011\08-AUG\080911 Final PC Minutes.docx